

House File 787 - Introduced

HOUSE FILE _____
BY COMMITTEE ON STATE GOVERNMENT

(SUCCESSOR TO HF 602)

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act establishing an independent office of administrative
2 hearings within the department of inspections and appeals.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
4 TLSB 2121HV 83
5 ec/rj/14

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1 1 Section 1. Section 10A.104, subsection 2, Code 2009, is
1 2 amended to read as follows:
1 3 2. Appoint the administrators of the divisions within the
1 4 department and all other personnel deemed necessary for the
1 5 administration of this chapter, except the state public
1 6 defender, assistant state public defenders, administrator of
1 7 the racing and gaming commission, members of the employment
1 8 appeal board, ~~the chief administrative law judge,~~
1 9 ~~administrative law judges,~~ and administrator of the child
1 10 advocacy board created in section 237.16. All persons
1 11 appointed and employed in the department are covered by the
1 12 provisions of chapter 8A, subchapter IV, but persons not
1 13 appointed by the director are exempt from the merit system
1 14 provisions of chapter 8A, subchapter IV.

1 15 Sec. 2. Section 10A.104, subsection 5, Code 2009, is
1 16 amended to read as follows:
1 17 5. Adopt rules deemed necessary for the implementation and
1 18 administration of this chapter in accordance with chapter 17A,
1 19 ~~except as provided in section 10A.801.~~

1 20 Sec. 3. Section 10A.106, Code 2009, is amended to read as
1 21 follows:
1 22 10A.106 DIVISIONS OF THE DEPARTMENT.
1 23 1. The department is comprised of the following divisions:
1 24 ~~a. Administrative hearings division.~~
1 25 ~~b. a. Investigations division.~~
1 26 ~~c. b. Health facilities division.~~
1 27 2. The allocation of departmental duties to the divisions
1 28 of the department in sections 10A.402, ~~and~~ 10A.702, ~~and~~
1 29 ~~10A.801~~ does not prohibit the director from reallocating
1 30 departmental duties within the department. The director shall
1 31 not reallocate any of the duties of the office of
1 32 administrative hearings, created by section 10A.801, to any
1 33 other unit of the department.

1 34 Sec. 4. Section 10A.801, Code 2009, is amended to read as
1 35 follows:
2 1 10A.801 ~~DIVISION OFFICE~~ OF ADMINISTRATIVE HEARINGS ==
2 2 CREATION, POWERS, DUTIES.
2 3 1. Definitions. For purposes of this section, unless the
2 4 context otherwise requires:
2 5 a. "Administrator" means the ~~person coordinating the~~
2 6 ~~administration of the division~~ chief administrative law judge.
2 7 b. "~~Division~~" "Office" means the office of administrative
2 8 ~~hearings division of within~~ the department of inspections and
2 9 appeals.
2 10 2. An independent office of administrative hearings within
2 11 the department is created to be headed and administered by a
2 12 chief administrative law judge appointed by the governor for a
2 13 term of six years subject to confirmation by the senate. The
2 14 chief administrative law judge may be removed by the governor
2 15 at any time for good cause. The administrator shall
2 16 coordinate the ~~division's office's~~ conduct of appeals and
2 17 administrative hearings as provided by law.
2 18 3. a. The ~~department administrator~~ shall employ a

2 19 sufficient number of administrative law judges to conduct
2 20 proceedings for which agencies are required, by section 17A.11
2 21 or any other provision of law, to use an administrative law
2 22 judge employed by the division office. An administrative law
2 23 judge employed by the division office shall not perform duties
2 24 inconsistent with the judge's duties and responsibilities as
2 25 an administrative law judge and shall be located in an office
2 26 that is separated from the offices of the agencies for which
2 27 that person acts as a presiding officer. Administrative law
2 28 judges shall be covered by the merit system provisions of
2 29 chapter 8A, subchapter IV.

2 30 b. The division office shall facilitate, insofar as
2 31 practicable, specialization by its administrative law judges
2 32 so that particular judges may become expert in presiding over
2 33 cases in particular agencies. An agency may, by rule,
2 34 identify particular classes of its contested cases for which
2 35 the administrative law judge who acts as presiding officer
3 1 shall have specified technical expertness. After the adoption
3 2 of such a rule, the division office may assign administrative
3 3 law judges to preside over those identified particular classes
3 4 of contested cases only if the administrative law judge
3 5 possesses the technical expertness specified by agency rule.
3 6 The division office may charge the applicable agency for the
3 7 costs of any training required by the division's office's
3 8 administrative law judges to acquire or maintain the technical
3 9 expertise specified by agency rule.

3 10 4. If the division office cannot furnish one of its
3 11 administrative law judges in response to an agency request,
3 12 the administrator shall designate in writing a full-time
3 13 employee of an agency other than the requesting agency to
3 14 serve as administrative law judge for the proceeding, but only
3 15 with the consent of the employing agency. The designee must
3 16 possess the same qualifications required of administrative law
3 17 judges employed by the division office.

3 18 5. The division office may furnish administrative law
3 19 judges on a contract basis to any governmental entity to
3 20 conduct any proceeding.

3 21 6. ~~After July 1, 1999, a~~ A person shall not be newly
3 22 employed by the division office as an administrative law judge
3 23 to preside over contested case proceedings unless that person
3 24 has a license to practice law in this state.

3 25 7. The division office shall adopt rules pursuant to this
3 26 chapter and chapter 17A to do all of the following:

3 27 a. To establish procedures for agencies to request and for
3 28 the administrator to assign administrative law judges employed
3 29 by the division office.

3 30 b. To establish procedures and adopt forms, consistent
3 31 with chapter 17A and other provisions of law, to govern
3 32 administrative law judges employed by the division office, but
3 33 any rules adopted under this paragraph shall be applicable to
3 34 a particular contested case proceeding only to the extent that
3 35 they are not inconsistent with the rules of the agency under
4 1 whose authority that proceeding is conducted. Nothing in this
4 2 paragraph precludes an agency from establishing procedural
4 3 requirements otherwise within its authority to govern its
4 4 contested case proceedings, including requirements with
4 5 respect to the timeliness of decisions rendered for it by
4 6 administrative law judges.

4 7 c. To establish standards and procedures for the
4 8 evaluation, training, promotion, and discipline for the
4 9 administrative law judges employed by the division office.
4 10 The procedures shall include provisions for each agency for
4 11 whom a particular administrative law judge presides to submit
4 12 to the division office on a periodic basis the agency's views
4 13 with respect to the performance of that administrative law
4 14 judge or the need for specified additional training for that
4 15 administrative law judge. However, the evaluation, training,
4 16 promotion, and discipline of all administrative law judges
4 17 employed by the division office shall remain solely within the
4 18 authority of the department office.

4 19 d. To establish, consistent with the provisions of this
4 20 section and chapter 17A, a code of administrative judicial
4 21 conduct that is similar in function and substantially
4 22 equivalent to the Iowa code of judicial conduct, to govern the
4 23 conduct, in relation to their quasi-judicial functions in
4 24 contested cases, of all persons who act as presiding officers
4 25 under the authority of section 17A.11, subsection 1. The code
4 26 of administrative judicial conduct shall separately specify
4 27 which provisions are applicable to agency heads or members of
4 28 multimed membered agency heads when they act as presiding
4 29 officers, taking into account the objectives of the code and

4 30 the fact that agency heads, unlike administrative law judges,
4 31 have other duties imposed upon them by law. The code of
4 32 administrative judicial conduct may also contain separate
4 33 provisions, that are appropriate and consistent with the
4 34 objectives of such a code, to govern the conduct of agency
4 35 heads or the members of multimember agency heads when they act
5 1 as presiding officers. However, a provision of the code of
5 2 administrative judicial conduct shall not be made applicable
5 3 to agency heads or members of multimember agency heads unless
5 4 the application of that provision to agency heads and members
5 5 of multimember agency heads has previously been approved by
5 6 the administrative rules coordinator.

5 7 e. To facilitate the performance of the responsibilities
5 8 conferred upon the division office by this section, chapter
5 9 17A, and any other provision of law.

5 10 8. The division office may do all of the following:

5 11 a. Provide administrative law judges, upon request, to any
5 12 agency that is required to or wishes to utilize the services
5 13 of an administrative law judge employed by the division
5 14 office.

5 15 b. Maintain a staff of reporters and other personnel.

5 16 c. Administer the provisions of this section and rules
5 17 adopted under its authority.

5 18 9. The division office may charge agencies for services
5 19 rendered and the payment received shall be considered
5 20 repayment receipts as defined in section 8.2.

5 21 10. Except to the extent specified otherwise by statute,
5 22 decisions of administrative law judges employed by the
5 23 division office are subject to review by the agencies for
5 24 which they act as presiding officers as provided by section
5 25 17A.15 or any other provision of law.

5 26 Sec. 5. Section 17A.11, subsection 1, paragraph a,
5 27 unnumbered paragraph 1, Code 2009, is amended to read as
5 28 follows:

5 29 If the agency or an officer of the agency under whose
5 30 authority the contested case is to take place is a named party
5 31 to that proceeding or a real party in interest to that
5 32 proceeding the presiding officer may be, in the discretion of
5 33 the agency, either the agency, one or more members of a
5 34 multimember agency, or one or more administrative law judges
5 35 assigned by the division office of administrative hearings in
6 1 accordance with the provisions of section 10A.801. However, a
6 2 party may, within a time period specified by rule, request
6 3 that the presiding officer be an administrative law judge
6 4 assigned by the division office of administrative hearings.
6 5 Except as otherwise provided by statute, the agency shall
6 6 grant a request by a party for an administrative law judge
6 7 unless the agency finds, and states reasons for the finding,
6 8 that any of the following conditions exist:

6 9 Sec. 6. Section 17A.11, subsection 1, paragraphs b and c,
6 10 Code 2009, are amended to read as follows:

6 11 b. If the agency or an officer of the agency under whose
6 12 authority the contested case is to take place is not a named
6 13 party to that proceeding or a real party in interest to that
6 14 proceeding the presiding officer may be, in the discretion of
6 15 the agency, either the agency, one or more members of a
6 16 multimember agency, an administrative law judge assigned by
6 17 the division office of administrative hearings in accordance
6 18 with the provisions of section 10A.801, or any other qualified
6 19 person designated as a presiding officer by the agency. Any
6 20 other person designated as a presiding officer by the agency
6 21 may be employed by and officed in the agency for which that
6 22 person acts as a presiding officer, but such a person shall
6 23 not perform duties inconsistent with that person's duties and
6 24 responsibilities as a presiding officer.

6 25 c. For purposes of paragraph "a", the division office of
6 26 administrative hearings established in section 10A.801 shall
6 27 be treated as a wholly separate agency from the department of
6 28 inspections and appeals.

6 29 Sec. 7. Section 20.6, subsection 4, Code 2009, is amended
6 30 to read as follows:

6 31 4. Hold hearings and administer oaths, examine witnesses
6 32 and documents, take testimony and receive evidence, issue
6 33 subpoenas to compel the attendance of witnesses and the
6 34 production of records, and delegate such power to a member of
6 35 the board, persons appointed or employed by the board,
7 1 including administrative law judges, or administrative law
7 2 judges employed by the division office of administrative
7 3 hearings created by section 10A.801, for the performance of
7 4 its functions. The board may petition the district court at
7 5 the seat of government or of the county where a hearing is

7 6 held to enforce a board order compelling the attendance of
7 7 witnesses and production of records.
7 8 Sec. 8. Section 216.15, subsection 3, paragraph a, Code
7 9 2009, is amended to read as follows:
7 10 a. After the filing of a verified complaint, a true copy
7 11 shall be served within twenty days on the person against whom
7 12 the complaint is filed. If the first named respondent on a
7 13 complaint is not a governmental entity, service of a true copy
7 14 on the respondent shall be by certified mail. An authorized
7 15 member of the commission staff shall make a prompt
7 16 investigation and shall issue a recommendation to an
7 17 administrative law judge employed either by the commission or
7 18 by the ~~division office~~ of administrative hearings created by
7 19 section 10A.801, who shall then issue a determination of
7 20 probable cause or no probable cause.
7 21 Sec. 9. Section 453A.2, subsection 6, Code 2009, is
7 22 amended to read as follows:
7 23 6. If a county health department, a city health
7 24 department, or a city has not assessed a penalty pursuant to
7 25 section 453A.22, subsection 2, for a violation of subsection
7 26 1, within sixty days of the adjudication of the violation, the
7 27 matter shall be transferred to and be the exclusive
7 28 responsibility of the Iowa department of public health.
7 29 Following transfer of the matter, if the violation is
7 30 contested, the Iowa department of public health shall request
7 31 an administrative hearing before an administrative law judge,
7 32 assigned by the ~~division office~~ of administrative hearings ~~of~~
~~7 33 the department of inspections and appeals~~ in accordance with
7 34 the provisions of section 10A.801, to adjudicate the matter
7 35 pursuant to chapter 17A.

8 1 EXPLANATION

8 2 This bill establishes an independent office of
8 3 administrative hearings within the department of inspections
8 4 and appeals headed by a chief administrative law judge subject
8 5 to appointment by the governor and confirmation by the senate.
8 6 Current law provides for a division of administrative hearings
8 7 within the department of inspections and appeals headed by an
8 8 administrator appointed by the director of the department.
8 9 Current duties and authority of the division are transferred
8 10 to the new independent office.
8 11 LSB 2121HV 83
8 12 ec/rj/14